



TARRANT COUNTY

FORT WORTH, TEXAS 76196-7752

BROOKE ALLEN
JUDGE, PROBATE COURT NO. 2

100 WEATHERFORD
AREA CODE 817.884.1415

November 30, 2020

Texas House Judiciary Committee

Via Electronic Mail

Re: Request for Information

Dear Chairman Leach and the Texas House Judiciary Committee,

Enclosed with this letter is a letter sent July 28, 2020 regarding the forced technology. I hope you will consider it with this letter regarding the requested information.

Probate Court No. 2 in Tarrant County, Texas, ("PC2") has received plenty of PPE for the court and staff.

The caseload of PC2 is significantly backlogged. For example, I used to hear three simple, uncontested will prove-ups every 15 minutes. Now, only one can be heard every ten minutes. I heard approximately 40 every Monday, versus approximately 25 now. Hearings were heard one per 15 minutes. Now it is one per 30 minutes. Contested matters also take significantly longer due to issues with technology – time taken to login and live stream, making sure everyone is on and can be heard and seen, parties or their attorneys "dropping off", the "freezing" of screens, etc...

PC2 uses Zoom for most hearings/trials and Lifesize for most mental health trials. As mentioned above and in the attached letter, other than it taking significantly longer, they have been acceptable for uncontested matters. However, for contested evidentiary matters, these platforms are no substitute for in-person hearings and trials. Please see the attached letters for descriptions of many of the issues. These have continued since the letter was written. In addition, the lack of respect for the judiciary and judicial system has increased. When one can sit comfortably on their couch in their living room for trial, many times the importance and immediacy of the proceedings is lost.

Court staff initially worked from home. Production fell. The staff is back at the courthouse working. All of our staff has their own office. Thus, we are able to properly space and PPE is provided and utilized. I never stopped working at the courthouse. Flexible scheduling is allowed. No one is known to have contracted the virus from working in the courthouse.

Thank you for the opportunity to provide insight to the judiciary. I hope to open my court fully using reasonable precautions. No judge should be placed in the position of choosing between

providing full access to justice or defending a judicial ethics complaint as we are now with the current orders of the Texas Supreme Court.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Brooke Allen", with a large, sweeping flourish at the end.

Brooke Allen



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July 28, 2020

Texas House Judiciary Committee

Via Electronic Mail

Re: Forced Technology in Lieu of In-Person Evidentiary Hearings and Trials

Dear Chairman Leach and the Texas House Judiciary Committee,

As a former attorney who litigated numerous cases involving multiple parties, large sums of money, and sometimes a person's rights, and now as a Judge who presides over probate, guardianship, mental health, and general civil litigation, I strongly urge you not to implement evidentiary hearings or trials via electronics.

In my current role, many of the litigants I see are allegedly incompetent or have a mental health diagnosis. Per Texas law, they are entitled and receive a court-appointed attorney. Prior to COVID, these attorneys met with the proposed ward or patient in-person prior to trial. They conducted the trial in-person where there was contemporaneous effective assistance of counsel and valuable confrontation of witnesses. The outcome of these trials determines whether they lose their civil liberties such as deciding where they live, to marry, to vote, etc... Or, in the mental health context, the outcome determines whether they are forced to stay in a mental institution or be injected with psychiatric drugs against their will. The stakes are high.

David Slayton, with the Office of Court Administration, has articulated Zoom provides effective assistance of counsel. He states a person can go into a "back room" and speak with their attorney. They can chat on a cell phone. However, this is not contemporaneous effective assistance of counsel which is imperative to effective representation. Moreover, for persons who are allegedly incompetent or have a mental health diagnosis, is this truly functional? These people have to see their attorney on a screen. They have to waive their hand or interrupt to speak with counsel. They must remember the issue to discuss. Then, they must go into a "back room" or on a cell phone to have the conversation. And, if they do not hit mute, the attorney client privilege may be deemed waived. This seems to be a huge burden on the proposed ward or patient (and really any litigant).

Another issue is the veracity of witnesses along with confrontation of witnesses. Although the confrontation clause has not yet been applied to civil cases, should not someone who is facing the loss of their civil liberties, involuntary confinement, and/or the forcing of psychiatric drugs into their body, have a fair opportunity to confront those against them? Should the judge or jury not have the opportunity to judge the witnesses' body language along with their testimony? Do you know if anyone is with the witness prompting testimony? Do they have notes? Could damaging testimony be stalled or changed by a bad connection or simply by someone dropping off the "meeting"? Again, the OCA says the veracity of a witness is not a valid reason for an in-person trial. (This also begs the question as to whether the OCA is

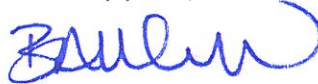
usurping a trial judge's discretion to proceed in their own courtroom as they see fit in order to ensure procedural and substantive rights and due process.)

Even in uncontested matters, electronic hearings pose their own issues. The more people "attending", the more user errors as far as unmuting and muting, people dropping off, and screens freezing. Moreover, in my experience, zoom hearings take two to three times longer than a hearing in person. Thus, the court dockets are backing up substantially. This is on top of the due process issues which are bound to arise with the issue mentioned above and those not covered in this letter.

Finally, the respect for the judiciary and our legal system is ignored via electronics. Callers are on the dealership floor selling cars while zooming, wearing their pajamas, driving their car or boat, talking to others in the room or on their cell phone during the hearing, etc... There is no way to enforce contempt after a warning to please refrain from these behaviors. There is no bailiff to assist. The judge and the judicial system are at the mercy of those "participating." I can only imagine the complications, both procedurally and substantively, with having voir dire and a jury trial over technology.

As a passionate supporter of the American and Texas judicial systems being the best in the world, I implore you not to force electronics on the judges, attorneys, and litigants, especially in contested, evidentiary, proceedings. People deserve their day in court. They deserve justice. They do not deserve Brady-bunch theatrics posing as due process.

Sincerely yours,



Brooke Allen

cc: Craig Goldman
Charlie Geren
Stephanie Klick
Giovanni Capriglione
Johnathan Stickland
Bill Zedler
Tony Tinderholt
Jane Nelson
Kelly Hancock
Beverly Powell
Brian Birdwell